

Dobrich, et al.
Dr. Mark A. Isaacs

v.
C.A. # 15-120 (JJF)

Indian River School District, et al.
October 18, 2006

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
3 MONA DOBRICH and MARCO : C.A. No. 15-120 (JJF)
4 DOBRICH, Individually and :
5 as parents and next friend :
6 of ALEXANDER DOBRICH, :
7 SAMANTHA DOBRICH, JANE DOE :
8 and JOHN DOE, Individually :
9 and as parents and next :
10 friend of JORDAN DOE and :
11 JAMIE DOE, :
12 :
13 Plaintiffs, :
14 :
15 v. :
16 :
17 INDIAN RIVER SCHOOL :
18 DISTRICT, et al., :
19 :
20 Defendants. :
21 :
22
23 Videotaped Deposition of DR. MARK A. ISAACS,
24 taken pursuant to notice, on Wednesday, October 18,
25 2006 at 1:36 p.m. at 31 Hosier Street, Selbyville,
26 Delaware, reported by Lorena J. Hartnett, a Registered
27 Professional Reporter and Notary Public.
28
29 APPEARANCES:
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31 RICHARD HORVATH, ESQUIRE
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APPEARANCES: (CONTINUED)

JARROD SHAU, ESQUIRE
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Attorney for the Defendants

VIDEOGRAPHER: This is the videotaped

deposition of Dr. Mark A. Isaacs, taken by
the plaintiff in the matter of Dobrich et
al. versus Indian River School District, et
al.. Civil Action Number 15-120. The
deposition is taking place at 31 Hosier
Boulevard in Selbyville, Delaware, on
October 18, 2006 at approximately 1:36 p.m.

The court reporter is Lorena Hartnett
from the firm of Wilcox & Fetzer. My name
is Mark Buckmaster, a video specialist from
Discovery Video Services Incorporated in
association with Wilcox & Fetzer. Counsel
will now introduce themselves and the
reporter will swear in the witness.

MR. ALLINGHAM: Tom Allingham
representing the plaintiffs. With me is
Brian Lenhard and Richard Horvath.

MR. SHAU: Jarrod Shau representing
the defendants.

DR. MARK A. ISAACS,

HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION ON BEHALF OF THE PLAINTIFFS

BY MR. ALLINGHAM:

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TESTIMONY OF DR. MARK A. ISAACS:

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Q. All the other witnesses so far have referred
to you as Dr. Isaacs. Is that how you prefer to be
addressed?

A. Mark.

Q. Mark? Well, I can't do that, so I will call
you Dr. Isaacs, unless Mr. is preferable?

A. No, that's fine.

Q. When were you elected to the Indian River
School Board?

**A. You would think that would be simple. About
three and a half years ago I actually filled in for
Joe Booth, who was elected representative.**

Q. So --

A. It's over three years.

Q. So spring of 2003, roughly speaking?

A. I think so.

Q. Were you appointed or elected?

A. I was appointed.

Q. Did you interview for the position when you
were appointed?

**A. To be honest, I do not recall. I think I
attended the board meeting and -- I honestly don't
remember.**

Q. Dr. Isaacs, where do you live?

2 (Pages 2 to 5)

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1 **A. Georgetown, Delaware.**
2 Q. What's the address?
3 **A. 16043 Clemson Lane.**
4 Q. Have you been a lifelong resident of Sussex
5 County?
6 **A. Yes.**
7 Q. Did you attend the Indian River schools?
8 **A. Yes.**
9 Q. Which high school did you graduate from?
10 **A. Sussex Central.**
11 Q. Would you describe for me your education
12 after high school?
13 **A. I attended Clemson University where I**
14 **obtained a bachelor's and a master's degree, and then**
15 **got a Ph.D. from Virginia Tech.**
16 Q. What was your master's in?
17 **A. Master's in plant science physiology.**
18 Q. And your Ph.D.?
19 **A. Plant physiology.**
20 Q. Are you currently employed?
21 **A. Yes.**
22 Q. As what?
23 **A. Director of the University of Delaware**
24 **Research and Education Center.**

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1 Q. Where is that located?
2 **A. Georgetown.**
3 Q. Research and --
4 **A. Education Center.**
5 Q. -- education as to what?
6 **A. Cooperative extension, doing agricultural**
7 **research, teach. I also teach.**
8 Q. How long have you had that position?
9 **A. Since '91. I have been with the University**
10 **for 20 years, but I have been the director there since**
11 **'91.**
12 Q. And when did you get your Ph.D.?
13 **A. 2000.**
14 Q. Have you spoken with anyone who has already
15 been deposed in this matter?
16 **A. No.**
17 Q. What did you do to prepare for the
18 deposition?
19 **A. Nothing other than have a meeting last night**
20 **with Jason.**
21 Q. Did that meeting take place down here?
22 **A. No.**
23 Q. Where did it take place?
24 **A. Sussex Central High School.**

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1 Q. Was anyone else present during the meeting?
2 **A. No.**
3 Q. Did Mr. Gosselin show you any documents?
4 **A. No, not really.**
5 Q. In connection with this litigation, the
6 plaintiff's side provided to the defendant's side
7 something called a production request, which is a
8 process by which litigants ask the other side for
9 documents described in the request.
10 Have you ever seen or been told about a
11 production request for documents from the plaintiff's
12 side?
13 **A. No.**
14 Q. Have you ever been asked by anyone to collect
15 documents that are relevant to the issues in this
16 case?
17 **A. I do remember if we had any e-mail**
18 **correspondence or anything like that regarding**
19 **anything, that we were supposed to forward that**
20 **information over, but I had none.**
21 Q. Do you maintain an e-mail account or
22 accounts?
23 **A. Yes, I have e-mail.**
24 Q. And have you done so since the spring of

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1 2004?
2 **A. Yes, the University of Delaware e-mail.**
3 Q. Does the district communicate with you from
4 time to time via e-mail?
5 **A. Occasionally, not very often.**
6 Q. How did you search your -- How did you search
7 for e-mail correspondence relating to the issues in
8 this case when you were asked to do so?
9 **A. I didn't have any.**
10 Q. How did you know?
11 **A. Because I know. I read my e-mail.**
12 Q. So you had an affirmative recollection that
13 you had had no communications from anyone --
14 **A. Right.**
15 Q. -- relating to the issues in this case via
16 e-mail?
17 **A. Right.**
18 Q. On the rare occasions when you are
19 communicated with via e-mail from the district, what
20 are the topics?
21 **A. Mainly not from the school. Mainly from say**
22 **booster club members, parent advisory groups.**
23 **Probably the most recent was one of the field hockey**
24 **boosters asking about conditions of the field.**

3 (Pages 6 to 9)

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1 Q. Do you know how those folks get your e-mail
2 addresses, or are they communications that are routed
3 through the district to you?
4 **A. No, no, not that I am aware of.**
5 Q. They are direct communications?
6 **A. Yes.**
7 Q. How do those folks get your e-mail address?
8 **A. Probably Google, I would speculate.**
9 Q. Did you get any e-mail communications from
10 anyone about the issue of school board prayer?
11 **A. No.**
12 Q. Did you get any faxes from anyone about
13 school board prayer?
14 **A. No.**
15 Q. Did you get any written communications of any
16 kind from anyone other than the district about school
17 board prayer?
18 **A. Would you repeat that?**
19 Q. Yes. Did you get any written communications
20 of any kind from anyone other than the district?
21 **A. Just what we have gotten from lawyers.**
22 Q. All right. So over the entire course of the
23 consideration and adoption of the school board prayer
24 policy, you received no written communications from

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1 any constituents on the issue?
2 **A. (Shaking head)**
3 Q. And no written communications of any kind
4 from a fellow board member?
5 **A. No.**
6 Q. Dr. Isaacs, what lawyers, and identify them
7 by name, if you can, did the board receive advice from
8 on the issue of school board prayer?
9 **A. The two gentlemen, and I'm sorry I cannot**
10 **tell you their names, but the two gentlemen that were**
11 **with the insurance company.**
12 Q. John Cafferkey and John Balaguer?
13 **A. Yes.**
14 Q. Who else?
15 **A. Thomas Neuberger was at one meeting.**
16 Q. And did you receive advice from Mr. Neuberger
17 at that meeting?
18 **A. No, not really. He just sat there and took**
19 **everything in, the one that I was at.**
20 Q. Okay. Do you have a recollection as to
21 whether that was a regular or a special meeting?
22 **A. No, I do not recall.**
23 Q. Do you have a recollection as to whether it
24 was an open session or executive session?

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1 **A. I would -- I don't recall. I would probably**
2 **say executive.**
3 Q. Wherever it took place, your recollection is
4 that Mr. Neuberger was largely silent during that
5 meeting?
6 **A. Yes.**
7 Q. Did Mr. Neuberger during that meeting
8 distribute any materials to the board members?
9 **A. No.**
10 Q. Did Mr. Helms distribute any materials from
11 Mr. Neuberger?
12 **A. Not that I recall, no.**
13 Q. Did the board receive any advice from
14 Mr. Griffin on issues relating to school board prayer,
15 James Griffin?
16 **A. Yes, yes, we had.**
17 Q. And Mr. Griffin was, at the time in the
18 summer of 2004, the board's attorney; correct?
19 **A. Yes.**
20 Q. Mr. Griffin is no longer the board's
21 attorney; is that right?
22 **A. I don't know. I am not on the board now.**
23 Q. Up until the time you left the board,
24 Mr. Griffin had remained the board's attorney?

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1 **A. Yes, but there were times where we sought**
2 **additional information.**
3 Q. And when did you leave the board?
4 **A. July.**
5 Q. Am I correct that you were on the Policy
6 Committee while you were on the board?
7 **A. Yes.**
8 Q. Why did you decide to serve on the school
9 board?
10 **A. Well, I had two young children, one five and**
11 **one ten, and one that is in the Indian River School**
12 **District. At that time the middle school son was**
13 **not -- He went to the elementary school. Primarily to**
14 **be able to help shape the district, if my kids so**
15 **chose to go, I guess.**
16 Q. And why did you choose not to run for a seat
17 again in 2006?
18 **A. Very, very demanding time wise. If you look,**
19 **when you asked the question about the Policy**
20 **Committee, I was on there, but I bet if you go back**
21 **and look at the minutes, I don't think I might have**
22 **attended four or five policy meetings my entire term**
23 **there.**
24 **Not only do I work for the University of**

4 (Pages 10 to 13)

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1 Delaware, but I also farm; I have graduate students;
2 and, quite honestly, I didn't feel like I was
3 fulfilling the time commitment that I needed to devote
4 to the board, so I just elected to not -- I had too
5 many pots on too many stoves.

6 Q. Which district within Indian River District
7 did you represent?

8 A. One.

9 Q. Is that a northern district or a southern
10 district?

11 A. I guess it depends on -- I don't really
12 divide the district, you know, but.

13 Q. I don't ask that question with any particular
14 agenda in mind. We have had testimony from several of
15 your former colleagues that the district is widely
16 perceived as having a southern half and a northern
17 half?

18 A. Correct.

19 Q. In which half does the first district fall?

20 A. Northern.

21 Q. During your time on the Policy Committee, who
22 else served on that committee? And let's start with
23 board members, and then if you can recall non-board
24 members.

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1 A. Mr. Harvey -- I think it was just Mr. Harvey
2 Walls and myself as far as board members. And then
3 Dr. Bunting was there. Usually Dr. Owens.

4 Q. First name?

5 A. Michael, Dr. Michael Owens. The IREA rep,
6 which --

7 Q. IREA stands for Education Association?

8 A. Yes.

9 Q. Anyone else?

10 A. Assistant superintendent.

11 Q. That's Mr. Savage?

12 A. Yes. I think that was it.

13 Q. Did the Policy Committee meet monthly?

14 A. Yes.

15 Q. I know that it was an estimate, but you
16 estimated you attended maybe only five or six Policy
17 Committee meetings during your tenure?

18 A. That's probably generous.

19 Q. Fine. When you missed a meeting, how did you
20 keep informed about what had been addressed or
21 accomplished?

22 A. At the board meetings.

23 Q. By talking to Mr. Walls at the board meeting?

24 A. Yes, and then usually at each board meeting

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1 there is an opportunity where each subcommittee of the
2 board presents to the board an update on what's taken
3 place, so in Harvey's case he would say, you know, the
4 Policy Committee meeting, blah, blah, blah, so forth.

5 Q. Did you have separate conversations from time
6 to time with Mr. Walls on that topic?

7 A. If I did, it was very minute, I would say
8 most of my information came from the board meeting.

9 Q. When you were a board member, did you keep a
10 file of documents that related to your service as a
11 board member?

12 A. Yes, and no. We would get a board packet,
13 and I would keep it for maybe two or three months, and
14 then dispose of it just because, quite frankly, you
15 didn't have the space to store it.

16 Q. Did you take notes at board meetings?

17 A. No.

18 Q. Did the board ever receive advice from the
19 Alliance Defense Fund?

20 A. I do not remember any advice. I do remember
21 there was discussions regarding talking to them, but I
22 don't remember any advice coming.

23 Q. Did the board ever retain the Alliance
24 Defense Fund or any of its affiliated attorneys?

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1 A. Not that I am -- Not that I am aware of.

2 Q. Let me show you a document we have marked as
3 Plaintiff's Exhibit 3. I don't know if you have been
4 deposed before, but we mark the documents so that you
5 can then retrace the steps.

6 A. Right, right, sure.

7 Q. My first question to you is have you ever
8 seen this document before?

9 A. Yes. This was what I was referencing, any
10 information that was needed. Right.

11 Q. And what did you do to ensure that you
12 preserved any documents that were relative to the
13 issues in this case?

14 A. Really, nothing, because I did not have any
15 communications with anybody regarding it.

16 Q. I will have that back, please.

17 A. (Handing back)

18 Q. This is, and actually let's mark -- Let's
19 mark as PX58, BPD497.

20 (Exhibit PX58 was marked.)

21 BY MR. ALLINGHAM:

22 Q. Mr. Isaacs, the court reporter has handed you
23 what we have marked as PX58. This is a letter from
24 Nathan Kellam on Alliance Defense Fund letterhead,

5 (Pages 14 to 17)

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1 which has a copy marked to the Board of Education of
2 the Indian River School District. My first question
3 is have you ever seen this document before?
4 **A. I don't remember seeing this, no.**
5 Q. The first sentence of the letter, which is
6 addressed to me, reads, "Please know that this office
7 has been retained by the Board of Education for Indian
8 River School District regarding any possible challenge
9 to policies on," among other things, "board prayer at
10 regular board meetings." Do you see that?
11 **A. Yes, sir.**
12 Q. Was the Alliance Defense Fund retained by the
13 Board of Education for the Indian River School
14 District for that purpose?
15 **A. I would assume so with this, yes.**
16 Q. Apart from having seen that document, did you
17 have any recollection that the board had retained the
18 Alliance Defense Fund or Mr. Kellam for this purpose?
19 **A. No.**
20 Q. Did Mr. Kellam or any representative of the
21 Alliance Defense Fund ever appear at a board meeting
22 while you were serving as a board member?
23 **A. I don't recall any, but I also missed a**
24 **number of board meetings, as well.**

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1 Q. Thank you. Are you a churchgoer, Dr. Isaacs?
2 **A. No, sir.**
3 Q. Are you a member of any particular religious
4 faith?
5 **A. If you go back to childhood, yes.**
6 Q. And what would that be?
7 **A. Methodist.**
8 Q. Would you characterize yourself as a
9 Christian?
10 **A. Yes, I would hope, hope so.**
11 Q. There was a board meeting on October 24, 2004
12 which we have characterized as the big board meeting.
13 It's the one where hundreds of people showed up to
14 talk about the school board prayer issue. Do you
15 remember that meeting, August 24, 2004?
16 **A. Oh, August?**
17 Q. Yes, sir.
18 **A. No, honestly I can't say I do remember it.**
19 Q. I am going to show you what we have
20 previously marked as PX17. This is a copy, as you
21 will see from the signature of Mrs. Hobbs on the last
22 page, of the official minutes of the August 24, 2004
23 meeting of the board. This took place at the
24 Frankford Elementary School cafeteria.

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1 You will see that these are the official
2 minutes and this is obviously the signature. On the
3 first page of the minutes is the roll call section of
4 the minutes, and it records that you were present at
5 the meeting.
6 **A. Yes.**
7 Q. Do you have any reason to doubt that you were
8 there?
9 **A. No.**
10 Q. Whether it was on August 24 or some other
11 date, do you recall being present at a board meeting
12 at which hundreds and hundreds and hundreds of people
13 showed up?
14 **A. Yes.**
15 Q. And do you recall that it took place at the
16 Frankford Elementary School?
17 **A. No.**
18 Q. Okay. This is a meeting where an overflow
19 room had been set up and also speakers out in the
20 parking lot. Do you remember that?
21 **A. Yes.**
22 Q. All right. When did you arrive at that
23 meeting, if you recall?
24 **A. I would say if it were normally, if it were**

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1 **normal, probably ten minutes prior to the start, I**
2 **mean.**
3 Q. Did you know in advance of your arrival that
4 there would be a huge crowd at the meeting?
5 **A. No, not really.**
6 Q. I take it, then, you were surprised when you
7 got there and there were speakers in the parking lot
8 and police cars and so forth?
9 **A. Yes, right.**
10 Q. Do you recall that the -- Do you recall that
11 the school board prayer issue was discussed at that
12 meeting?
13 **A. No, I don't recall.**
14 Q. I should have been more specific. I don't
15 mean discussed by the board. I mean the subject of
16 public comments during the meeting.
17 **A. Yes, yes.**
18 Q. Do you recall that the public comment session
19 was expanded to accommodate more speakers?
20 **A. No, I don't recall that, but, if it was, it's**
21 **not atypical if there is a large overflow.**
22 Q. Several witnesses have said that they
23 couldn't recall a meeting that was anywhere near this
24 size in terms of the attendance. Would you agree with

6 (Pages 18 to 21)

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1 that?
2 **A. Couldn't recall a meeting?**
3 Q. There were more people in attendance at this
4 meeting than any other that you recall?
5 **A. Yes, yes, yes.**
6 Q. By a factor of two or three; correct?
7 **A. I would say probably a good estimate.**
8 Q. Was the tone of the public remarks during
9 this meeting respectful and courteous at all times?
10 **A. From what I can recall, yes.**
11 Q. Do you recall that some speakers were loudly
12 cheered?
13 **A. No, but again that's not atypical either if**
14 **it's a heated subject matter.**
15 Q. Do you recall that some speakers were loudly
16 booed?
17 **A. No.**
18 Q. Do you recall the public responding
19 frequently with shouts of amen during speakers'
20 comments?
21 **A. No, I don't.**
22 Q. Do you recall being troubled by any of the
23 remarks offered at the public session?
24 **A. No.**

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1 Q. Other than the fact that there were a lot of
2 people in attendance, do you remember anything about
3 that meeting?
4 **A. No.**
5 Q. If you will look at page nine of the minutes
6 I just gave you, there is a separate public comment
7 session. The first public comment session is
8 reflected on page four. There is a second one on page
9 nine during which Pam Shockley and Colin Waters spoke.
10 Do you know either Ms. Shockley or Mr. Waters?
11 **A. No, sir.**
12 Q. Do you recall their comments during this
13 session?
14 **A. No.**
15 Q. The minutes record that, "Mr. Griffin noted
16 that according to the regulations of the State
17 Department of Education prayer must be student-issued
18 and student-led, and then President Walls explained
19 our procedures for establishing policy."
20 Do you recall what President Walls said in
21 explaining your procedures for establishing policy?
22 **A. No.**
23 Q. Tell me what the procedure was for
24 establishing policy. How were policies --

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1 **A. For a policy to be approved and implemented?**
2 Q. Yes.
3 **A. Um, normally it involved a Policy Committee**
4 **meeting. It would begin there. Actually, it would**
5 **begin by maybe an inquiry, if there was something that**
6 **needed to be looked at from the public's perspective.**
7 **It would be brought attention to the Policy**
8 **Committee. The Policy Committee would then usually**
9 **put together a first and second reading. It would**
10 **bring it to the board.**
11 **The board would discuss it, look at it, make**
12 **amendments to it, and then go back and there would be**
13 **a recommendation from the Policy Committee for**
14 **approval.**
15 Q. And was it typical for policies, for the
16 board to deliberate on the desirability of adopting a
17 policy in public session or in executive session or
18 both?
19 **A. I would say probably both.**
20 Q. As a board member, did you consider it
21 desirable for the public to have the opportunity to
22 see the board's deliberations on policies that were
23 proposed for adoption?
24 **A. I certainly didn't have a problem with it.**

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1 Q. Did the Policy Committee meet in public or in
2 private?
3 **A. The times I was present, it was in private --**
4 **Well, in private.**
5 Q. In the period of time that you were a board
6 member from 2003 to 2006, did the board customarily
7 open its regular meetings with a prayer?
8 **A. Yes.**
9 Q. Did the board customarily open its special
10 meetings with a prayer?
11 **A. I don't think so.**
12 Q. Is there any reason in terms of the
13 differences between regular meetings and special
14 meetings why, that you can see in your mind, why
15 regular meetings would be opened with a prayer but
16 special meetings would not?
17 **A. Tradition. For as long as I was a student,**
18 **even back when Sussex Central High School, board**
19 **meetings were always opened with a prayer, and I think**
20 **to bring -- Board meetings were at least more**
21 **formalized.**
22 Q. You mean regular ones as opposed to special
23 ones?
24 **A. Right, right, so the general board meetings**

7 (Pages 22 to 25)

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1 opened to the, you know, to the public. The formal
2 monthly board meetings, the agendas were always
3 packed, so there was a lot to go through and to
4 preview and discuss, so I think it was just a part --
5 Kind of like the presenting of arms. That doesn't
6 take place at say a Policy Committee meeting or a
7 Bills and Grants meeting. It's kind of a formal part
8 of the board meeting, a tradition part, I guess.

9 Q. When you became a board member, Mr. Walls was
10 the president; is that right?

11 A. Yes.

12 Q. Did Mr. Walls at anytime ask you whether you
13 wanted to be invited to open a meeting of the board
14 with a prayer?

15 A. Yes.

16 Q. And what did you tell him?

17 A. I told him I chose not to.

18 Q. Did he ask you that question as sort of a
19 general proposition when you first joined the board,
20 or did he offer you the opportunity from time to time
21 at board meetings to open the meeting with a prayer?

22 A. I think the only discussion that we had that
23 I can recall is he asked me and I said I chose not to,
24 and I didn't get asked after that.

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1 Q. And was that before or after the adoption of
2 the formal board prayer policy?

3 A. Oh, that was in the very beginning before any
4 of this.

5 Q. And, if you recall, did Mr. Walls ask you
6 that question at a board meeting or sometime outside
7 of the board meeting?

8 A. I don't recall.

9 Q. And why did you choose not to take up his
10 invitation to open the board meeting with a prayer?

11 A. Personal preference.

12 Q. Personal preference based on what?

13 A. Based on I didn't want to do it.

14 Q. Did you have any problem with other board
15 members doing it?

16 A. No.

17 Q. This question may seem odd, but were you glad
18 that -- Strike that. Did Mr. Walls ask you that
19 question publicly, or did he ask you privately before
20 the meeting began?

21 A. I don't remember, honestly.

22 Q. Do you remember being asked publicly at a
23 meeting, "Dr. Isaacs, would you like to offer a
24 prayer," and having to say, "No, thanks," in public?

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1 A. No, I don't recall.

2 Q. Do you think that it would potentially be
3 embarrassing or put you on the spot if Mr. Walls had
4 asked you that question at the public meeting, itself?

5 A. No.

6 Q. Is it correct that you never gave a prayer to
7 opening a board meeting?

8 A. Correct.

9 Q. When the board policy was adopted, and the
10 opportunity was articulated specifically in the policy
11 that a meeting could be opened with a moment of
12 silence, did that change your view or your personal
13 preference as to whether you wanted to participate?

14 A. (Shaking head)

15 Q. You have to answer out loud.

16 A. I'm sorry, no.

17 Q. When Mr. Bireley became board president in
18 2005, did he ask you whether you wanted to be included
19 in the group that would be asked to offer a prayer?

20 A. I don't recall. I think so, but I don't
21 really recall.

22 Q. And am I right that if he did so ask you, you
23 said no, thank you?

24 A. Yes.

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1 Q. Do you remember a comment -- This is the big
2 board meeting again at which there was a lengthy
3 public comment --

4 A. (Yawning) Excuse me.

5 Q. I sympathize. Do you recall a comment being
6 offered from the podium during the public comment
7 session about Madalyn Murray O'Hair?

8 A. No.

9 Q. Do you know who Madalyn Murray O'Hair is?

10 A. No.

11 Q. A man named Harold Johnson, during his public
12 comments, suggested that Madalyn Murray O'Hair's
13 disappearance was evidence that God was the highest
14 power. Does that refresh your recollection about that
15 comment?

16 A. No, not really.

17 Q. Mr. Johnson then went on to inform the public
18 present at the meeting that Madalyn Murray O'Hair was
19 the person who had started the movement to take prayer
20 out of our schools. Does that refresh your
21 recollection?

22 A. No.

23 Q. Did you pay attention throughout the public
24 comment session of the meeting?

8 (Pages 26 to 29)

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1 **A. No, no, and, you know, I may be answering a**
2 **lot I don't recall now, but let me just tell you so**
3 **you understand. Oftentimes I would spend time during**
4 **the public comments in previewing board-related**
5 **information, so I might have been there but I might**
6 **have not been listening, so.**
7 Q. That is to say you might have been focusing
8 on the business of the board?
9 **A. Right, exactly.**
10 Q. Did you hear Mrs. Dobrich speak at the public
11 comment session?
12 **A. Yes, yes.**
13 Q. And what was your reaction to her comments?
14 **A. I think she did it in a professional manner.**
15 Q. Did you have a personal view as to whether
16 you agreed or disagreed with her suggestion that the
17 board consider prayers that were not in the name of
18 Jesus?
19 **A. I respected what she said.**
20 Q. Did you agree with it?
21 **A. I would say a non-sectarian prayer would,**
22 **would be appropriate.**
23 Q. And when you say non-sectarian prayer, you
24 are talking about what Mrs. Dobrich was talking about,

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1 **A. Yes.**
2 Q. Would you agree with me that at least for
3 board meetings during the academic year there were
4 always students in attendance at the board meetings?
5 **A. Yes.**
6 Q. And, depending on the number of awards, it
7 might simply be the five or six folks who were there
8 for student government and the presentation of the
9 colors, or it could be dozens and dozens?
10 **A. Yes.**
11 Q. Depending on the awards, but always some of
12 them?
13 **A. Yes. There might have been a board meeting**
14 **or two that there weren't any awards presented to a**
15 **student.**
16 Q. But you would still have the color guard?
17 **A. Right.**
18 Q. And the student government representative?
19 **A. Yes.**
20 Q. In the stack of documents that Mr. Shau has,
21 you will find PX9, which is, has been identified as a
22 copy of the board policy. Can we agree this is the
23 policy relating to school board prayer that was
24 adopted in October of 2004?

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1 that is a prayer simply to God or a higher power;
2 correct?
3 **A. Correct.**
4 Q. I may have asked you this, but how did you
5 get on the Policy Committee? Were you appointed? Did
6 you ask to be put on it?
7 **A. No, I didn't ask. Just -- If I recall, I**
8 **think Harvey had me on the Policy Committee and the**
9 **Scholarship Committee.**
10 Q. You testified earlier that even as a student
11 at Sussex Central you observed the board opening its
12 meetings with a prayer. I gather from that that from
13 time to time you attended board meetings as a student?
14 **A. Yes, sir.**
15 Q. For what purpose?
16 **A. Academic honors, athletic honors.**
17 Q. To get recognition from the board?
18 **A. Yes.**
19 Q. For achievement as a student?
20 **A. Yes.**
21 Q. Or an athlete?
22 **A. Yes.**
23 Q. And that practice continued throughout your
24 tenure as a board member, as well; correct?

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1 **A. Yes.**
2 Q. And you voted to adopt this policy; correct?
3 **A. Yes.**
4 Q. Did you have anything to do with the drafting
5 of this policy as a member of the Policy Committee?
6 **A. No, because I, I did not attend the Policy**
7 **Committee meetings, I don't think.**
8 Q. If you didn't attend, that means the only
9 board member who was in attendance at those Policy
10 Committee meetings was Mr. Walls; correct?
11 **A. No, because, if I am not mistaken, I think as**
12 **new board members came on board they were asked**
13 **whether they wanted a committee they wanted to be on.**
14 **I think -- I don't remember if, when this was adopted,**
15 **if there was anyone else that had joined the Policy**
16 **Committee since then, because, honestly, I don't think**
17 **I had attended a meeting in almost two years. It had**
18 **been a long, long time.**
19 Q. We can shorten things up. Are you confident
20 that you did not attend any Policy Committee meetings
21 at which this policy was considered?
22 **A. Yes.**
23 Q. Okay.
24 **A. Yes.**

9 (Pages 30 to 33)

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1 Q. The first paragraph reads, "In order to
2 solemnify its proceedings, the Board of Education may
3 choose to open its meetings with a prayer or moment of
4 silence, all in accord with the freedom of conscience
5 of the adult board member."

6 Would you agree with me that the policy
7 identifies the purpose of the prayer or moment of
8 silence as to solemnify its proceedings?

9 A. Yes.

10 Q. What does "in order to solemnify its
11 proceedings" mean to you?

12 A. I guess interpretation wise would be this
13 being a formalized board meeting to recognize that it
14 is a unique meeting monthly where many important
15 decisions are brought to the attention of the board
16 and to the public, and it requires careful thought and
17 deliberation.

18 Q. To sort of remind the board members that they
19 have to take their responsibilities seriously?

20 A. Seriously, yes.

21 Q. And discharge those obligations to the best
22 of their ability?

23 A. Yes.

24 Q. As a board member, did you understand that

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1 "in order to solemnify its proceedings" was the
2 functional equivalent of "in order to seek divine
3 guidance"?

4 A. No.

5 Q. Do you think that it is an appropriate
6 purpose of the prayer at the board meeting to seek
7 divine guidance?

8 A. If you have ever been a board member, I think
9 you will recognize that any help you can get would
10 graciously appreciated, so I think wherever you get it
11 from.

12 Q. But you didn't understand that to be the
13 meaning of "in order to solemnify its proceedings."?

14 A. No, no.

15 Q. Now, with respect to what you described for
16 me as your understanding of "solemnify its
17 proceedings," was it your view as a board member that
18 you and your colleagues needed a prayer in order to be
19 reminded to take your duties and obligations
20 seriously?

21 A. I didn't.

22 Q. You did?

23 A. I did not.

24 Q. Fair enough. Did you understand — Based on

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1 your perception of your colleagues over the course of
2 your three years of service, did you think it was
3 necessary for the Board of Education to open its
4 meetings with a prayer in order for your colleagues to
5 take their duties and obligations seriously?

6 A. I wouldn't say to take it seriously. I would
7 just say to extend every opportunity to provide
8 assistance in making decisions, so I wouldn't say that
9 they did not take their duties seriously.

10 Q. Would it be fair for me to infer from your
11 answer that there is another purpose besides
12 solemnification of the proceedings for the prayer that
13 this policy authorizes, and that purpose is to provide
14 the individual board members with the opportunity to
15 seek divine guidance if they wish?

16 A. I guess that's a matter of interpretation.

17 Q. And I am asking for your interpretation as a
18 board member when you voted to adopt this policy.

19 A. No, I mean I said no because it didn't for
20 me.

21 Q. At anytime during the consideration of Board
22 Policy BDA.1, this board prayer policy, did anyone
23 suggest that the policy safeguarded the right of the
24 individual board members to pray as they saw fit?

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1 A. Well, according to this, it gives any board
2 member the opportunity to express and pray to whoever
3 they want and however they want. So, to answer that
4 question, I would say yes.

5 Q. Your answer spoke to terms of reviewing text
6 of the policy and interpreting the policy. My
7 question had to do with comments by board members
8 during the consideration of the policy.

9 Did any board member ever say, in words or
10 substance, "We should adopt this policy because it
11 safeguards the rights of individual board members to
12 pray as they see fit."?

13 A. No.

14 Q. And when you say no, do you mean, "No, I
15 remember that that was never said," or "No, I don't
16 recall that that was ever said."?

17 A. No, I don't recall any board member
18 specifically saying, "Adopt this so we can pray."

19 Q. Paragraph three of the policy reads, quote,
20 "Such opportunity." And that opportunity is the
21 opportunity to open the meeting with a prayer;
22 correct, or a moment of silence?

23 A. (Nodding head)

24 Q. "Such opportunity shall not be used or

10 (Pages 34 to 37)

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1 exploited to proselytize, advance or convert anyone or
2 to derogate or otherwise disparage any particular
3 faith or belief."
4 Would you agree with me that that paragraph
5 imposes some limitations on the right of board members
6 to pray as they see fit?
7 **A. Yes.**
8 Q. And that was a limitation that you, as a
9 board member, thought was appropriate to include in
10 the policy?
11 **A. Yes.**
12 Q. What did you understand in the context of
13 this paragraph the prohibition against proselytizing
14 to mean?
15 **A. I guess my interpretation of it would be that**
16 **you cannot use that opportunity to advance or promote**
17 **any one particular religion over another.**
18 Q. Who had the responsibility to ensure that
19 that limitation was complied with?
20 **A. I would assume that it would be left up to**
21 **the individual giving the prayer. I mean there wasn't**
22 **a police officer there to enforce anything or anything**
23 **like that.**
24 Q. I know you weren't being facetious, and when

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1 Jesus Christ."
2 **A. Yes, it would.**
3 Q. That would violate paragraph three?
4 **A. Yes.**
5 Q. Now, suppose that a board member gave that
6 prayer which would violate, in your view, paragraph
7 three. What would be done? What would be the
8 response of the board?
9 **A. As far as repercussions, you mean, or?**
10 Q. Yes, if any?
11 **A. I would assume that there would be dialogue**
12 **that would take place, probably in executive session,**
13 **to ask one of the board members why did you do that or**
14 **why did you say those words or --**
15 Q. I purposely picked that extreme example so we
16 could explore what the board would do. I could ask
17 you what you would have done. That's an example that
18 seems to you to be a clear violation of paragraph
19 three. Would you have brought that to the president
20 or the individual board member's attention yourself?
21 **A. Yes.**
22 Q. And I take it what you would have done is to
23 say, "I believe that prayer was in violation of our
24 policy." Correct?

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1 I say enforce, that may have caused you to think about
2 police officers. I meant was it the board members
3 themselves who had the obligation to enforce this
4 limitation?
5 **A. Yes.**
6 Q. Now, do you recall any prayer that was
7 offered that you viewed as either violating paragraph
8 three or raising a question about whether it violated
9 paragraph three at anytime during your tenure after
10 the adoption of this policy?
11 **A. No, not really, because, you know, my**
12 **interpretation of it was that each board member had**
13 **the opportunity to express as they felt fit as long as**
14 **it wasn't used to promote any one particular religion,**
15 **so, no, I don't remember any specific board prayer**
16 **that was more offensive or less offensive or anything**
17 **like that.**
18 Q. I am going to offer -- I am going to give you
19 an example of a prayer that -- Well, I will let you
20 make the judgment, but I am going to give you a prayer
21 and ask you if it would have been given it would have
22 violated the policy. Okay?
23 "Oh, Lord, please convert the Jews in the
24 audience and ensure that they come to know our Lord

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1 **A. Yes.**
2 Q. At that point the horse would be out of the
3 barn; right?
4 **A. Right.**
5 Q. On that prayer?
6 **A. Right.**
7 Q. Would you suggest that that person be taken
8 out of the rotation to offer prayers thereafter, or do
9 you think --
10 **A. No, I am not a one-strike man, so I would**
11 **give them the opportunity to redeem themself.**
12 Q. Okay. And if the board member then offered a
13 prayer, you know, "Convert the heathens in the
14 audience, please, Lord," you would at that point two
15 strikes is enough?
16 **A. Yeah.**
17 Q. You wouldn't give them a third chance?
18 **A. Right.**
19 MR. ALLINGHAM: Okay. We are going to
20 change the tape.
21 THE WITNESS: Okay.
22 VIDEOGRAPHER: Going off the record at
23 2:34 p.m.
24 (A recess was taken.)

11 (Pages 38 to 41)

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1 VIDEOGRAPHER: Going back on the
2 record at 2:39 p.m.
3 BY MR. ALLINGHAM:
4 Q. Dr. Isaacs, I am going to show you a second
5 prayer, and this one is long, so I am going to give it
6 to you in writing. We have previously marked this as
7 PX35. I will read it into the record, but follow
8 along as we go.
9 "Do not put your trust in princes, in mortal
10 men who cannot even save themselves. When their
11 spirit departs, they return to the ground. On that
12 very day, their plans come to nothing. Blessed is he
13 whose help is the God of Jacob, whose hope is in the
14 Lord, his God, the maker of heaven and earth, the sea,
15 and everything in them, the Lord who remains faithful
16 forever. He upholds the cause of the oppressed and
17 gives food to the hungry. The Lord sets prisoners
18 free. The Lord gives sight to the blind. The Lord
19 lifts up those who are bowed down. The Lord loves the
20 righteous. The Lord watches over the alien and
21 sustains the fatherless and the widow, but he
22 frustrates the ways of the wicked. For the wages of
23 sin is death, but the gift of God is eternal life
24 through Jesus Christ our Lord."

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1 In your judgment as a board member, would
2 that prayer be permitted or be prohibited by paragraph
3 three of the policy?
4 **A. It's not nondenominational.**
5 Q. But the policy doesn't require that a prayer
6 be nondenominational. The policy simply requires that
7 the prayer not be used or exploited to proselytize,
8 advance or convert anyone or to derogate or otherwise
9 disparage any particular faith. So, in light of that,
10 would you view this as --
11 **A. No, I would not view this as bad.**
12 Q. It would be permitted under paragraph three?
13 **A. Yes, yes.**
14 Q. And, to put it in the language of paragraph
15 three, you would not view that prayer as --
16 **A. Proselytizing.**
17 Q. -- proselytizing?
18 **A. No, sir.**
19 Q. This prayer has been marked as PX45. It
20 reads, "Heavenly Father, thank you for this great
21 occasion, for the work, the effort, the joys and
22 everything that led up to this point in time.
23 Thank you for your guidance in this event. We pray
24 for your direction in the lives of each of these

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1 school board members. We pray that you direct them
2 into the truth and eventually the truth that comes by
3 knowing Jesus. We also pray that you would be with
4 them at this time. We ask these things in Jesus's
5 name. Amen."
6 Do you view that prayer as proselytizing?
7 **A. No. It's not nondenominational, but no.**
8 Q. You have said that several times. Do I
9 correctly infer from that that, as a board member, you
10 would have preferred that the prayers that are offered
11 to open a meeting be nondenominational?
12 **A. I think everybody should be free to express**
13 **how they choose to do so, so I would say it's a matter**
14 **of interpretation. I mean this goes in accordance**
15 **with what would be number three, any such prayer may**
16 **be sectarian or non-sectarian, so it's following the**
17 **policy, I guess, is what I am saying, but.**
18 Q. Let me ask you this question: Is it possible
19 for a prayer to be sectarian, that is directed to a
20 particular deity, and at the same time not be
21 proselytizing?
22 **A. I guess when I think of proselytizing, I am**
23 **thinking of someone standing up at the pulpit saying,**
24 **"You will do this or this is the way you should go or**

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1 **this is the only way," in other words selling one**
2 **particular religion over another. So, in my eyes,**
3 **that's proselytizing.**
4 **Just giving a prayer at the personal**
5 **preference of whoever is giving it, everybody ought to**
6 **have a right, whether it's whoever.**
7 Q. And everybody ought to have that right,
8 that's in fact a right that, as you understand it, is
9 guaranteed by The Constitution?
10 **A. Absolutely.**
11 Q. Do you understand that there are any limits
12 on that right in The Constitution?
13 **A. There are many things in The Constitution**
14 **that are subject to a matter of interpretation.**
15 Q. In functioning as board members, do you
16 believe that the boards members are governmental
17 officials?
18 **A. Yes, I agree, yes.**
19 Q. And do you think that imposes any limitations
20 or changes in any way the rights to say whatever they
21 want with respect to the practice of religion?
22 **A. I think there is precedent to do things. I**
23 **mean that's freedom of speech, so I would say again**
24 **it's a matter of interpretation. I mean, honestly,**

12 (Pages 42 to 45)

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1 **you know, you may say something that I find offensive;**
2 **however, he may not.**
3 Q. On that issue, would you agree with me that
4 different people could reach a different conclusion as
5 to whether a particular prayer is proselytizing or
6 not?
7 **A. Absolutely.**
8 Q. And would you agree with me that it is likely
9 that the faith of the person making the judgment would
10 have an impact on that issue?
11 **A. Absolutely.**
12 Q. So that a Christian might find a Christian
13 prayer non-proselytizing, whereas a Jew or a Muslim
14 might find it proselytizing?
15 **A. Yes.**
16 Q. In that circumstance, for example, a
17 Christian might not be as sensitive to the issue
18 because the Christian was already a member of the
19 faith that the prayer might implicitly be seeking to
20 proselytize one to?
21 **A. Well, see, but I guess it goes back to what**
22 **you consider proselytizing, you know. To me, that's**
23 **not -- Jimmy Swaggart would be, you know, the one that**
24 **gets on TV and says, "You need to be saved," blah,**

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1 **different, and maybe it's just because that's --**
2 Q. And I am going to just offer one more change
3 to this prayer and ask you whether it changes your
4 view. Suppose that the prayer said, following that
5 same sentence again, "We pray that you direct them
6 into salvation and eventually the salvation that comes
7 by knowing Jesus."?
8 **A. Yes.**
9 Q. That would be proselytizing?
10 **A. Yes.**
11 Q. I am going to show you two documents that
12 appear to be drafts of the board policy and ask if you
13 have ever seen them before. The first one is a
14 document that we have marked as PX11. Actually, I
15 think it's in the stack in front of your counsel. No?
16 I have got it. (Handing) It's not too long. I am
17 going to ask you to read it, and I will have some
18 questions.
19 **A. Okay. Okay.**
20 Q. We have been going over PX9, the final board
21 policy. Would you agree with me that, with some minor
22 modifications, the text of PX11 is the same as the
23 final policy?
24 **A. Yes.**

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1 **blah, blah, blah, to me, that, when I think of**
2 **proselytizing, that's what I see, and that's not what**
3 **happens at board meetings. Nobody is sitting there**
4 **selling one religion over another, at least in my**
5 **interpretation.**
6 Q. Now, if you will look at PX45, which was the
7 second printed prayer that I asked you about --
8 **A. Uh-huh.**
9 Q. -- you will see that there is a statement in
10 the middle of the prayer, "We pray that you direct
11 them into the truth and eventually the truth that
12 comes by knowing Jesus."
13 Thinking about it again in light of the
14 discussion we have just had about proselytizing, do
15 you think that that statement might reasonably be
16 interpreted as the only way to the truth is through
17 Jesus?
18 **A. Could be.**
19 Q. And if that were how it was interpreted,
20 would you agree that that's a proselytizing prayer?
21 **A. No, I wouldn't agree that it's proselytizing.**
22 **I would say that it, the context of the words maybe**
23 **could be chosen better, but again I don't consider**
24 **that -- My definition of proselytizing is a little bit**

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1 Q. Now, my question is have you ever seen,
2 before I just showed it to you, --
3 **A. Yes.**
4 Q. -- that text?
5 **A. Yes.**
6 Q. In what context? When did you see it?
7 **A. I do not recall, but I have seen it.**
8 Q. This draft of the policy has a short sort of
9 preliminary statement that says, "Following the
10 rulings of the United States Court of Appeals Third
11 Circuit and past practices of State of Delaware
12 legislative bodies," and then it picks up with what
13 the text of the policy is.
14 Do you specifically recall a draft that has
15 that preliminary language?
16 **A. No, I do not.**
17 Q. Do you recall any discussion at the board or
18 Policy Committee level of rules of the United States
19 Court of Appeals Third Circuit?
20 **A. No.**
21 Q. Am I right that, so far as you recall, the
22 board did not discuss particular opinions or rules of
23 the Third Circuit Court of Appeals?
24 **A. Not that I recall.**

13 (Pages 46 to 49)

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1 Q. Other than your belief that you have seen
2 this before, do you have any other memory about how
3 you saw it, when you saw it, who gave it to you, how
4 it came into your possession, or anything?
5 **A. No, I don't. I would just assume that it**
6 **came in a board packet with, you know, other policies**
7 **or other information.**
8 Q. Now I am going to show you -- Do you know who
9 drafted that draft?
10 **A. No.**
11 Q. I am going to show you a document we have
12 previously marked as PX12. You can read as much of it
13 as you like, but my questions are directed to
14 particular portions of the document.
15 If you would look first at the next to last
16 and last page of PX12, you will see there are numbered
17 paragraphs that begin towards the bottom of the page?
18 **A. Yes.**
19 Q. I would like you to take the time to read
20 those numbered paragraphs one through five. Would you
21 agree with me that those paragraphs are substantively
22 identical to the final policy?
23 **A. Yes.**
24 Q. At the top of the first page of PX12, it

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1 reads, "For release to the general public, Proposed
2 School Board Prayer Resolution dated 8/30/04 prepared
3 by the Rutherford Institute and the Neuberger firm."
4 Do you see that?
5 **A. Yes.**
6 Q. Does that refresh your recollection as to who
7 drafted the text of the Board Policy BDA.1?
8 **A. No, but according to this it appears that**
9 **they were involved with it.**
10 Q. They being the Rutherford Institute and the
11 Neuberger firm?
12 **A. Yes.**
13 Q. But you don't have any independent memory of
14 that?
15 **A. No.**
16 Q. Have you ever seen PX12 before?
17 **A. Not that I recall.**
18 Q. There is a lengthy discussion that goes
19 something like three and a half pages single-spaced
20 before this document gets to the text of the what
21 ultimately became the board policy on school board
22 prayer.
23 Do you recall any discussion of any of the
24 topics in those three and a half pages at the board

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1 level?
2 **A. No, not really.**
3 Q. For example, do you have a memory that there
4 was a discussion of whether, in the context of the
5 board prayer policy, of the fact that the country was
6 in a war with terrorism?
7 **A. No.**
8 Q. You would not view that as relevant to the
9 consideration of school board prayer; correct?
10 **A. Yes.**
11 Q. Do you recall a discussion of whether in
12 times of war the country's leaders have led the
13 country in prayer?
14 **A. No, I don't recall.**
15 Q. Do you have any recollection of a discussion
16 of a prayer offered by George Washington which
17 included the words "through Jesus Christ our Lord"?
18 **A. No.**
19 Q. Do you see it near the bottom of the page,
20 the words at the end of the prayer attributed to
21 George Washington "through Jesus Christ our Lord" is
22 italicized?
23 **A. Yes.**
24 Q. Do you have any recollection of them drawing

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1 your attention to those words?
2 **A. No.**
3 Q. Halfway through the second page there is a
4 whereas clause that talks about the American Civil
5 Liberties Union. Do you have any recollection of a
6 discussion of the American Civil Liberties Union
7 during the discussion of this school board prayer?
8 **A. You mean by board?**
9 Q. Yes, by board members.
10 **A. No, but I know that the public felt American**
11 **Civil Liberties Union -- I mean there is a sentiment**
12 **there that the ACLU is taking away rights of people by**
13 **the general public. But no, not that I recall.**
14 Q. So you don't recall any discussion at the
15 board level or at the Policy Committee -- I guess I am
16 just going to assume you weren't at Policy Committee
17 meetings. Okay?
18 **A. Yes, that's a good assumption.**
19 Q. Do you recall a discussion of any kind at the
20 board level of the involvement of the ACLU in this
21 litigation?
22 **A. Well, yes, I remember, if I am not mistaken,**
23 **that one of the board minutes add that there was**
24 **someone there from the ACLU that actually spoke, if I**

14 (Pages 50 to 53)

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1 **am not mistaken, but.**
2 Q. Your memory is accurate. Do you recall the
3 name of Dru Fennel?
4 **A. No.**
5 Q. Was the person who spoke a woman?
6 **A. Yes.**
7 Q. And did she speak at a meeting at which
8 Mrs. Dobrich also spoke?
9 **A. Good question.**
10 Q. That was a statement by a representative of
11 the ACLU. Do you recall discussions by board members
12 of the ACLU's involvement in this litigation?
13 **A. Um, maybe just questioning whether they were**
14 **involved in it, but no lengthy deliberation about**
15 **anything like that.**
16 Q. Let me come back to your statement about the
17 public. Do you understand or did you understand when
18 you were on the board that the public viewed the
19 board's defense of this lawsuit as a defense of
20 Christian values?
21 **A. Some did.**
22 Q. How did you find that out? Did they tell you
23 that?
24 **A. I am sure just in grocery stores and I mean**

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1 **obviously by comments of the general public, but.**
2 Q. Did you understand, Dr. Isaacs, that that was
3 a widely held view of the public? I am not talking of
4 the board members now, I am talking about the public.
5 **A. I wouldn't say -- I would not say it's a**
6 **widely held view. I would just say it was a view.**
7 Q. Which you heard from more than one person?
8 **A. Right.**
9 Q. These are hard things to remember, but can
10 you estimate the number of people who said that to you
11 in words or substance? Are we talking a dozen?
12 **A. No.**
13 Q. A hundred?
14 **A. No.**
15 Q. Two?
16 **A. No, no, no, not even five. If it didn't have**
17 **something to do with athletics or why the budget was**
18 **overspent, they were the main substance of what I was**
19 **dealing with.**
20 Q. The next clause on page two reads, "Whereas
21 the board has obtained the legal advice of two
22 competent and experienced constitutional attorneys,
23 John W. Whitehead, Esquire, and Thomas S. Neuberger,
24 Esquire, that prayer to open board meetings is

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1 constitutional in the United States Court of Appeals
2 for the Third Circuit, which includes Delaware, and
3 legal counsel have identified the following legal
4 authority in support of their legal opinion."
5 Do you recall having read something to that
6 effect at anytime during your consideration of the
7 board prayer policy?
8 **A. No, I don't.**
9 Q. Is it correct that the school board obtained
10 the legal advice of two confident and experienced
11 constitutional attorneys that prayer to open board
12 meetings is constitutional?
13 **A. I know a lot of questions were asked.**
14 **Whether you would say that you got their legal advice**
15 **from it, according to this, yes.**
16 Q. When you say "a lot of questions were asked,"
17 you mean questions were asked by board members of
18 Mr. Neuberger?
19 **A. Yes.**
20 Q. And did Mr. Neuberger respond?
21 **A. Yes.**
22 Q. And is the substance of his response
23 reflected in this memorandum prepared by
24 Mr. Neuberger?

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1 **A. Yes, yes.**
2 Q. Is it fair to say that this document
3 represents Mr. Neuberger's legal advice as reflected
4 in it?
5 **A. Again, I would say it's a matter of**
6 **interpretation.**
7 Q. With respect, I don't think this one is.
8 It's a question whether you recall that the substance
9 of the answers to the questions that were directed to
10 Mr. Neuberger is reflected in this memorandum.
11 **A. There was definitely input from him on it, so**
12 **yes.**
13 Q. On the third page in the third full
14 paragraph, this reads, "It is the opinion of legal
15 counsel that since the Indian River Board of Education
16 is a public legislative and deliberative body, it has
17 the right to open its meetings with a prayer." Do you
18 see that?
19 **A. Yes.**
20 Q. And is that reflective of the answers
21 Mr. Neuberger gave at the meeting you described?
22 **A. There were lots of people offering -- I don't**
23 **know if it would be Neuberger's own interpretation of**
24 **it, but I mean there were many people that have said**

15 (Pages 54 to 57)

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1 **that, that the Board of Education is considered a**
2 **legislative body, so I would not say that it was just**
3 **Thomas Neuberger.**

4 Q. I didn't ask whether it was just Thomas
5 Neuberger. I asked whether this reflects advice that
6 Mr. Neuberger gave in connection with his answers to
7 your questions at that meeting?

8 **A. Yes.**

9 Q. Okay. On page four, shortly before the
10 numbered paragraphs, there is a paragraph that starts,
11 "Thus."

12 "Thus is the opinion of legal counsel that
13 the Supreme Court's decision in March v. Chambers
14 which, unlike the Cole's decision, is a binding
15 precedent in Delaware, compels the conclusion that the
16 Indian River School District's tradition of opening
17 its meetings with a brief invocation is
18 constitutionally permissible."

19 Does that paragraph reflect the advice given
20 in the answers Mr. Neuberger gave to the board?

21 **A. Yes.**

22 Q. And would it be fair to say, Dr. Isaacs, that
23 in your consideration of how to vote on the board
24 prayer policy, one of the factors you took into

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1 **we got this whether we voted on it.**

2 Q. This being PX9?

3 **A. Yes, sir, yes.**

4 Q. I want to ask you a few questions about the
5 process of the board's consideration of the school
6 board prayer policy. Do you recall any public
7 discussion at anytime of the substance of the board
8 prayer policy, or was it all done either in Policy
9 Committee meetings or in executive session?

10 **A. You mean a board member and/or public or?**

11 Q. The board members. I will ask a different
12 question. Were the board members' deliberations on
13 Board Policy BDA.1 conducted in executive sessions or
14 in Policy Committee meetings rather than in open
15 session?

16 **A. When you say open session, you mean public**
17 **board meetings?**

18 Q. Yes, sir?

19 **A. Open to -- I don't recall much discussion**
20 **other than if the public stood up and gave their**
21 **opinion. There wasn't any dialogue. When the public**
22 **comment session comes in, the board members did not**
23 **respond. It's just an opportunity for them to stand**
24 **up, the public, and say whatever is on their minds, so**

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1 consideration was the advice that Mr. Neuberger gave
2 as reflected in this memorandum?

3 **A. Yes.**

4 Q. Did you take into account, because you have
5 mentioned that other people were giving advice,
6 as well, did you take into account the advice of other
7 lawyers on the issue?

8 **A. Yes.**

9 Q. And would that include Mr. Griffin's advice?

10 **A. Yes.**

11 Q. Now, I have shown you PX9, which is the final
12 policy, PX11 which is that first draft that you were
13 confident you had seen probably in a board package,
14 and then PX 12 which we just discussed.

15 Do you know how, what process was used to
16 arrive at the final text of the board policy? Were
17 you involved in that process in any way?

18 **A. No. You mean like Policy Committee putting**
19 **things together?**

20 Q. Or the board in executive session --

21 **A. No.**

22 Q. -- saying, "I think we should take out the
23 opening line of PX11," for example?

24 **A. No. The only thing that I remember is when**

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1 **there is no dialogue that takes place between the**
2 **board.**

3 Q. Fair enough, so that the public spoke about
4 this issue?

5 **A. Yes.**

6 Q. But the board members did not deliberate on
7 the issue in public; is that correct?

8 **A. Right, correct.**

9 Q. And the board members did not deliberate on
10 the actual board policy in public; correct?

11 **A. Not that I recall.**

12 Q. Do you recall that the board ever considered
13 the possibility of opening its meetings only with a
14 moment of silence, not a prayer?

15 **A. I know that that was my suggestion.**

16 Q. And was that a suggestion that you made in a
17 board meeting?

18 **A. Yes. I think it was.**

19 Q. Do you know at which board meeting you made
20 that suggestion?

21 **A. No.**

22 Q. Why did you make that suggestion?

23 **A. That's my personal belief.**

24 Q. Did you believe that a moment of silence

16 (Pages 58 to 61)

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1 would be effective to solemnify the proceedings?
2 **A. Yes, I do.**
3 Q. What was the response, if any, of the board
4 members to your suggestion?
5 **A. It was heard.**
6 Q. Did anybody say in words or substance, "That
7 suggestion is not acceptable to me"?
8 **A. No, no, no. There wasn't a vote taken or**
9 **anything like that.**
10 Q. No, sir, this is in the discussion of ideas
11 at the board meeting.
12 **A. No.**
13 Q. You offered the idea of maybe we could open
14 the meeting with a moment of silence?
15 **A. Right. The only thing I would say is the**
16 **others said, "Well, I should have the right to do it**
17 **however I would like to do it, however I would like to**
18 **pray, it's my freedom of speech." I do recall that.**
19 Q. And so the incorporation of not only a moment
20 of silence but also a prayer in the policy was
21 intended to preserve those board members' individual
22 freedoms of speech?
23 **A. Yes.**
24 Q. Did you ever see anybody leave the room when

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1 **there on every single board meeting, so I would say**
2 **there are mechanisms to get up and leave a board**
3 **meeting that you don't have to tack a particular**
4 **clause to it. There is plenty of opportunities to get**
5 **up.**
6 Q. So you would agree with me that the
7 perception, if no explanation were offered of someone
8 who hearsay the disclaimer and gets up and leaves,
9 would be that that person affirmatively did not want
10 to participate in the prayer; correct?
11 **A. Well, no, not necessarily. They could get up**
12 **to go to the restroom or something like that. You**
13 **know, I -- I mean if it was the same person over and**
14 **over again, then maybe yes, yes, but that particular**
15 **board meeting, no. I mean we have people getting up**
16 **and going out all the time, so.**
17 Q. During the prayer?
18 **A. Coming in the during, people come in.**
19 Q. We talked earlier about the color guard
20 folks, the junior ROTC kids?
21 **A. Yes.**
22 Q. Realistically speaking, as a practical
23 matter, if they don't want to participate in the
24 prayer, they can't leave; correct?

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1 the -- Let me back up one second. After the policy
2 was adopted, it became the practice of the board to
3 read a disclaimer before the prayer was given;
4 correct?
5 **A. Yes.**
6 Q. At anytime after the policy was adopted, did
7 you see anyone upon hearing the disclaimer get up and
8 leave the room during the prayer?
9 **A. Honestly, I never paid any attention. I was**
10 **reading.**
11 Q. Working on board business?
12 **A. Yes.**
13 Q. Let me ask you a question about your
14 perception. Do you think it would be a difficult
15 thing for a student to get up and leave the board
16 meeting during the reading of the prayer?
17 **A. I guess it depends on the student.**
18 Q. Can you imagine that it would be -- Can you
19 imagine that a student would fear that that would
20 identify the student as a person who doesn't practice
21 a religion?
22 **A. Not necessarily, because one could get up and**
23 **leave saying they had to use the restroom, so you**
24 **didn't always have to tack it to, unless you were**

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1 **A. Sure.**
2 Q. Is it your belief that the Indian River
3 School District is a Christian area?
4 **A. Yes, I would say it is.**
5 Q. And the board policy on school board prayer
6 recognizes that the Indian River School District is a
7 Christian area; does it not?
8 **A. Yes.**
9 Q. Would it be fair for me to understand that
10 the discussion of the school board prayer policy, the
11 board discussion of the school board prayer policy,
12 reflected the board members' beliefs that the Indian
13 River School District is a Christian area?
14 **A. Yes.**
15 Q. Mr. Bireley was quoted in one of the many
16 newspaper articles around this issue saying that, "The
17 prayer suit facing the district and the board was one
18 of the major issues surrounding this year's
19 election" -- that's the 2006 election -- "and that it
20 probably swung this year's vote." Would you agree
21 with Mr. Bireley's statement?
22 **A. No.**
23 Q. You had served on the board for about a year
24 and a half at the point in time in October of 2004

17 (Pages 62 to 65)

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1 when the policy was adopted; correct?
2 **A. Yes.**
3 Q. From your perception, did the policy change
4 in any way the board's practice of offering a prayer
5 at the beginning of its meetings?
6 **A. No, the only thing was just making it clear**
7 **that no one has to participate, this is a voluntary**
8 **deal, I mean other than the verbiage that was put in,**
9 **if you want to call it the disclaimer statement.**
10 **That's the only thing that really maybe**
11 **changed, I guess, so to speak, just making sure that**
12 **people knew that this was not a requirement of the**
13 **formal setting of the board meeting; it was something**
14 **that was being practiced by the Board of Education.**
15 Q. To the extent that a board member chooses to
16 open the meeting with a prayer, is it correct that
17 that prayer is directed only to the ten board members?
18 **A. True.**
19 Q. And so whatever purpose it's intended to
20 accomplish, that purpose could be accomplished if the
21 ten board members prayed privately immediately before
22 the board meeting; correct?
23 **A. Yes. I brought that up, but I understand**
24 **that you can't do that because a board cannot meet**

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1 **independently like that because of the Sunshine Law,**
2 **which I am not familiar with, but it says the Board of**
3 **Educations cannot meet in a room before they go out**
4 **into the public. You can't have ten board members or**
5 **a majority of the board members meet behind closed**
6 **doors without some -- So, yes, that's one of the**
7 **things that I suggested, was that.**
8 Q. So you made a suggestion that, I am going
9 back to an earlier answer -- During the course of the
10 board's consideration of this school board prayer
11 issue, you made a suggestion that the board could
12 simply open its meetings with a moment of silence;
13 correct?
14 **A. Yes.**
15 Q. And the response to that from some of your
16 colleagues was, "You know, I have a First Amendment
17 right to pray however I want."
18 **A. Yes, right.**
19 Q. And the policy that was ultimately adopted
20 was intended to ensure that?
21 **A. Right.**
22 Q. You also made a suggestion that, "Okay, if
23 you want to pray however you want, maybe we could pray
24 in private right before we begin the meeting."

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1 Correct?
2 **A. Correct.**
3 Q. And someone said, "We can't do that because
4 of the Sunshine Laws."
5 **A. Right.**
6 Q. Who said that to you? Do you recall?
7 **A. I don't know.**
8 Q. Was it a board member or a lawyer?
9 **A. No, it wasn't a lawyer.**
10 Q. It was a board member?
11 **A. Yes.**
12 Q. Did anybody suggest looking into more closely
13 whether the Sunshine Laws would actually prohibit the
14 board members from just getting together and having a
15 prayer before they began their meeting?
16 **A. No, but there has been several other**
17 **instances where I know personally that I have said,**
18 **"Well, why don't we get together and talk about this,"**
19 **and was told, "You can't do that," so I just assumed,**
20 **you know, I would have to do the leg work to**
21 **investigate it myself.**
22 **I mean there were multiple issues other than**
23 **this where I mentioned about getting together, and we**
24 **were told the same thing, so.**

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1 Q. Did anybody suggest, you included, but did
2 anybody suggest that each of the board members could
3 pray however they want but simply pray silently?
4 **A. Yes.**
5 Q. Who suggested that?
6 **A. Me.**
7 Q. And what was the response to that suggestion?
8 **A. What I just said earlier, that --**
9 Q. "I can pray however I want to."
10 **A. Exactly.**
11 Q. And, "If I want to pray out loud, I will pray
12 out loud."
13 **A. Exactly.**
14 Q. There are -- Let me make it more specific.
15 During your tenure as a board member, were you aware
16 of discussions of issues that would be addressed by
17 the board among board members outside of meetings?
18 **A. (Shaking head)**
19 Q. It's a small community. People meet outside
20 of meetings from time to time, don't they?
21 **A. Yes. You mean board members?**
22 Q. Yes, sir.
23 **A. No.**
24 Q. You don't recall meeting someone in a

18 (Pages 66 to 69)

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1 restaurant and talking about some issue that was
2 presented to the board?
3 **A. No, because myself, personally, I didn't have**
4 **the time, so, you know, I don't know if the others did**
5 **it. Quite frankly, I didn't care.**
6 Q. Did anyone ever suggest that the
7 consideration of the board's deliberations on the
8 board policy on prayer should be considered in public
9 because of the Sunshine Laws?
10 **A. No, not that I recall.**
11 Q. Other than the suggestion to open the meeting
12 with a moment of silence, the suggestion that the
13 board members could meet privately immediately before
14 the meeting to pray, or the suggestion that each
15 individual board member could offer his own prayer
16 silently, according to his own conscience, did you
17 make any other suggestions during the discussions of
18 the board prayer policy?
19 **A. No, because, quite frankly, I felt there were**
20 **many other issues that needed closer attention than**
21 **these, so.**
22 Q. What do you mean by that?
23 **A. Meaning that the time that I was spending was**
24 **not on issues like this. It was on construction,**

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1 **budget, personnel matters, things like that.**
2 Q. Matters that you considered more important?
3 **A. More what would be typical of day-to-day**
4 **board operations.**
5 Q. This issue got a lot of attention in the
6 public and in the media; correct?
7 **A. Yes.**
8 Q. Did you think that the amount of attention it
9 got was disproportionate, given its importance to the
10 district?
11 **A. Are you asking for my personal opinion?**
12 Q. Yes.
13 **A. I would say so. That depends on who you talk**
14 **to.**
15 MR. ALLINGHAM: Let's go off the
16 record for five minutes. The farther we get
17 into the roster of witnesses, the more
18 quickly I am going, and I may well be done.
19 VIDEOGRAPHER: Going off the record at
20 3:27 p.m.
21 (A recess was taken.)
22 VIDEOGRAPHER: Going back on the
23 record at 3:30 p.m.
24 BY MR. ALLINGHAM:

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1 Q. When you made the suggestion that the board
2 could simply choose to open its meeting with a moment
3 of silence, did you think that that would have been an
4 effective way for the board to solemnify its
5 proceedings?
6 **A. Yes.**
7 Q. When you made the suggestion that the board
8 members could meet privately right before the board
9 meeting opened to have whatever prayer they wished,
10 did you think that that would have been an effective
11 way to solemnify the proceedings?
12 **A. Yes.**
13 Q. Then, lastly, when you made the suggestion
14 that each board member could silently offer whatever
15 prayer or whatever they wished to offer at the
16 commencement of the board meeting, did you think that
17 would have been an effective way to solemnify the
18 board's proceedings?
19 **A. Yes, in my opinion.**
20 MR. ALLINGHAM: I have nothing
21 further. Thank you very much.
22 VIDEOGRAPHER: Going off the record at
23 3:31 p.m.
24

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1 CERTIFICATE
2 I, Lorena J. Hartnett, a Notary Public and
3 Registered Professional Reporter, do hereby certify
4 that the witness, DR. MARK ISAACS, was by me first
5 duly sworn to testify the truth, the whole truth, and
6 nothing but the truth; that the foregoing deposition
7 was taken at the time and place stated herein; and
8 that the said deposition was recorded stenographically
9 by me and then reduced to typewriting under my
10 direction, and constitutes a true record of the
11 testimony given by said witness.
12 I further certify that the inspection,
13 reading and signing of said deposition was not waived
14 by counsel for the parties and by the witness.
15 I further certify that I am not a relative,
16 employee, or attorney of any of the parties or a
17 relative or employee of either counsel, and that I am
18 in no way interested directly or indirectly in this
19 action.
20 IN WITNESS WHEREOF, I have hereunto set my
21 hand and affixed my seal of office on this 24th day of
22 October 2006.
23
24 Cert. #134-RPR, Exp. 01-31-2008

19 (Pages 70 to 73)